

Report of: Assistant Chief Executive, Governance and HR

Meeting of	Date	Agenda Item	Ward(s)
Audit Committee	29 January 2015		

Subject: Workplace Resolution Policy

1 Synopsis

- 1.1 A new procedure is proposed in this report to replace the council's existing grievance procedure following a review of grievances undertaken by Diversity Practice. The new procedure aims to provide a framework within which most potential grievances can be resolved without recourse to a formal procedure.

2 Recommendations

- 2.1 To adopt the Workplace Resolution Procedure in Appendix 1 with effect from 1 February 2015 (or such later date as shall be determined by the Assistant Chief Executive, Governance and HR, to ensure the necessary training to support the new procedure has taken place) for the purposes of a pilot in a single department.
- 2.2 To agree that the procedure be adopted for the whole workforce following the pilot if in the view of the Assistant Chief Executive, Governance HR the pilot has been successful.
- 2.3 To authorise the Assistant Chief Executive, Governance HR, to make minor or consequential changes to the procedure from time to time following discussion with the Trade Unions.

3 Background

- 3.1 Due to the over-representation of BME staff in the grievance process the Communities Review Scrutiny Committee requested that an Independent Review of Grievances be conducted to understand why the over-representation exists.
- 3.2 At the conclusion of the review, recommendations for change were put forward by Diversity Practice (an independent organisational and

leadership consultancy) who conducted the review. The BME Forum also (separately) put forward its own recommendations.

- 3.3 Amongst the recommendations arising from the review was one that the council's grievance procedure should be reviewed, in particular in order to focus more on mediation and informal resolution. The draft procedure in Appendix 1 has been drafted on this basis.
- 3.4 The draft is divided into two parts. The main part is a new detailed informal resolution process and a formal procedure where informal resolution is not successful is provided in an appendix to the procedure.
- 3.5 The informal process will be triggered by a "resolution request". A "Resolution Manager" will be appointed to review the request and discuss with the employee and HR the most appropriate route for seeking a resolution. If the informal route is selected, a meeting will be arranged attended by the requester and other individuals(s) as appropriate and by the Resolution Manager or by a mediator if this is considered appropriate. In exceptional cases this might involve an external mediator.
- 3.6 The formal procedure to be used in the event that informal resolution cannot realistically be attempted or is unsuccessful broadly follows the same process as under the council's current procedure and will involve a detailed investigation by an investigating officer. However, it is currently drafted to allow in appropriate cases for a meeting between those involved to take place at the end of the investigation before the investigator issues a final report and recommendations. Findings of fact and the identification of possible ways forward may enable an agreed resolution even at this stage. Currently the investigator generally produces their final report at the end of the investigation and it is only discussed at the appeal in the context of an adversarial meeting. This will still be available in situations where a further attempt at agreed resolution is not consider viable.
- 3.7 In order to be in a position to implement the policy a group of managers will need to be trained as mediators as use only of external mediators would be very expensive. HR are investigating how this training can be most cost effectively arranged.
- 3.8 In order to test the effectiveness of the new approach it is suggested that the policy initially be piloted in a particular department.
- 3.9 The policy has been the subject of negotiation with the Trade Unions who support a more resolution focussed approach to dealing with potential and actual grievances.

4 Implications

4.1 Financial implications

There will be costs incurred in any exceptional cases where external mediation is used. These costs will need to be funded by the relevant service. There may be costs involved in training internal mediators, these costs will clearer once a detailed proposal for this training has been developed. It is anticipated that the costs to train up to 12 mediators will be in the region of £15,000.

4.2 Legal implications

The proposed Workplace Resolution Policy has been drafted taking account of the ACAS statutory Code of Practice on Disciplinary and Grievance Procedures.

4.3 Resident Impact Assessment

The council must, in the exercise of its functions, have due regard to the need to eliminate discrimination, harassment and victimisation, and to advance equality of opportunity, and foster good relations, between those who share a relevant protected characteristic and those who do not share it (section 149 Equality Act 2010). The council has a duty to have due regard to the need to remove or minimise disadvantages, take steps to meet needs, in particular steps to take account of disabled persons' disabilities, and encourage people to participate in public life. The council must have due regard to the need to tackle prejudice and promote understanding.

A resident impact assessment has been undertaken in respect of the draft procedure. The procedure has been developed specifically in response to concerns raised about the over-representation of BME staff in the existing grievance process.

5. Conclusions and Reasons for the Recommendations

The review of grievances undertaken by Diversity Practice has prompted a number of actions, including a review of the council's grievance policy to focus more on mediation and informal resolution. The draft new procedure has been the subject of negotiation with the trade unions and is recommended to the committee for adoption.

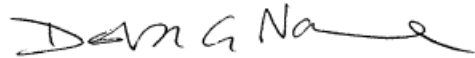
Appendices

Draft Resolution Procedure

Background papers: (available online or on request)

Final report clearance:

Signed by:



Debra Norman
Assistant Chief Executive (Governance and
HR)

Date

Received by:

Head of Democratic Services

Date

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WORKPLACE RESOLUTION POLICY

The council is committed to fostering mutual respect and understanding with all staff; between colleagues; between colleagues and their managers; and within teams.

1. Introduction and General Principles

- 1.1 This Workplace Resolution Policy applies to all council employees other than those based in schools from [].
- 1.2 It has been drawn up with reference to relevant legislation and case law and the ACAS Code of Practice on Disciplinary and Grievance Procedures. It has been the subject of formal consultation with the Trade Unions and discussions with the council's equalities staff groups and managers have had the opportunity to comment.
- 1.3 It aims to bring workplace complaints, conflicts or disputes to a satisfactory and constructive resolution and draws on five core principles:
 - Fairness
 - Mutual respect
 - Empathy
 - Dignity
 - Dialogue
- 1.4 This policy will be applied consistently and fairly to all employees based on the facts of their case. Employees will not be treated less favourably on the grounds of their age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation.
- 1.5 The council recognises that a positive working environment and good working relationships have a positive impact on employee well-being and employee engagement. A positive working environment can also lead to better performance, improved employee retention and reduced stress-related sickness absence. Focusing on resolution is good for the council, it is good for our employees and it is good for our residents.
- 1.6 The council also recognises that from time to time disagreements in the workplace or tensions in relationships, are normal and, in many cases, inevitable. When it does happen, we wish to support staff and managers to work together to resolve any disputes and conflicts constructively and speedily.
- 1.7 The Resolution Policy is aimed at securing constructive and lasting solutions to workplace disputes, conflicts and complaints. It is suitable for the following types of issue:

- Disagreements between colleagues.
- Disagreements within or between teams.
- Disagreements between managers and members of their team.
- Concerns or complaints about the allocation or distribution of resources.
- Concerns or complaints about the actions or the inactions of managers or colleagues.

1.8 It not suitable for issues relating to:

- statutory schemes (such as the pension scheme);
- dismissal or possible dismissal under the council's Disciplinary, Managing Attendance, Managing Poor Work Performance or Organisational Change Procedures, which should be dealt with under those procedures;
- issues covered by other local or national appeals procedures or the council's whistleblowing policy;
- grievances on behalf of two or more employees raised by a recognised trade union which can be dealt with under the collective disputes procedure; or
- incidents that happened more than 4 months before the Resolution Request is submitted

and must not be used to pursue false, malicious or vexatious complaints against colleagues or managers.

1.9 Unless agreed as part of a resolution recommendation the policy should not be used to re-open a matter within 12 months of the completion of action in respect of the same or a similar issue.

1.10 The policy also recognises that there is a responsibility on all employees to be reasonable in their expectations and to respect the rights of others in line with the council's code of conduct and Dignity for All.

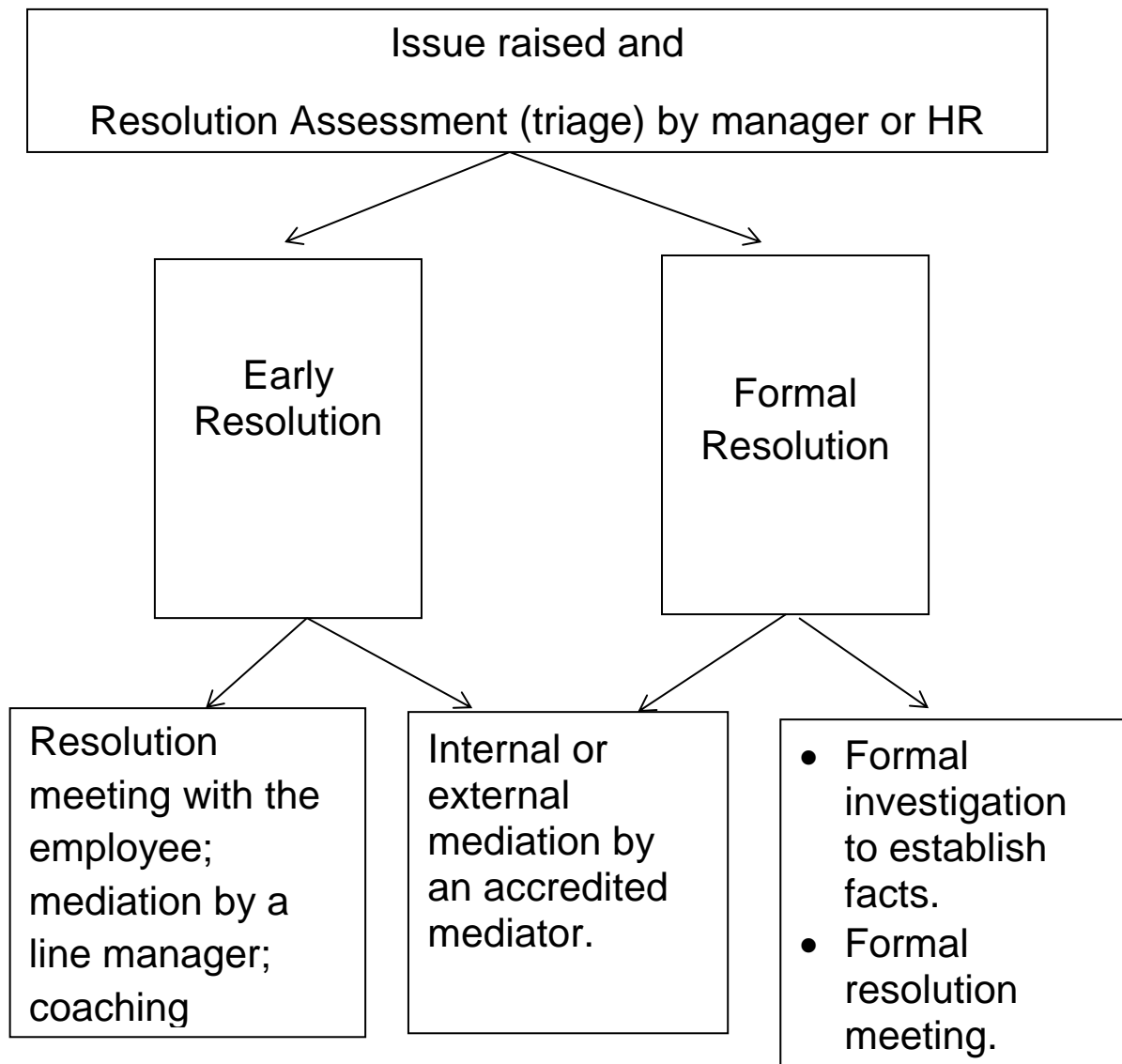
1.11 The main processes for resolution available through this Resolution Policy include:

- Review of key issues
- Resolution meetings between managers and employees.
- Mediation.
- Coaching.
- Formal investigation to establish the facts.
- Formal resolution meeting and/or decision.
- Appeal.

1.12 A trade union official selected by the employee may attend a resolution assessment meeting or an early resolution meeting to facilitate the reaching of a resolution. Where a trade union official attends a meeting for this purpose an HR representative will also attend and may attend in

other circumstances if appropriate. The purpose of the HR representative's attendance shall also be to facilitate a resolution. All meeting attendees will seek to maintain an informal and non-adversarial approach.

2. How It Works – A Summary



2.1 A Resolution Request can be made to:

- A line manager.
- A line manager's manager.
- A member of the HR team.
- A trade union official.

2.2 The employee should submit the reasons for their request in writing on the Resolution Request pro forma (available on Izzi) to their line manager, or where their line manager is the subject of the issue to which

the request relates, to the next line manager above (the “Resolution Manager”). The employee should also copy the pro forma to their departmental HR Business Partner (the names of HR Business Partners are available from izzi. site).

2.3 The resolution request can result in one (or more) of four courses of action:

- A resolution meeting between the manager and the employee.
- Mediation (by line manager or by an internal or, exceptionally, an external mediator).
- Formal investigation leading to a formal resolution meeting and/or decision.
- No further action.

In addition, it may be appropriate for coaching to be offered to one or more of those involved in the matter.

2.4 The Resolution Manager or HR will acknowledge receipt of the request, normally within 5 working days of receipt, and arrange for a resolution assessment to be undertaken and for a meeting to be set up to discuss this as soon as possible if required.

3. Resolution assessment

3.1 The resolution assessment is an opportunity for the Resolution Manager, together with their Business Partner, to review the key issues and to identify with the employee (or those involved) the most suitable route to resolution.

3.2 The resolution assessment can be undertaken by the line manager or an HR Business Partner depending upon the nature of the issue raised to establish the most effective route to resolution. Examples of relevant factors are set out in table 1 below. For each criterion, a possible resolution intervention is identified. The criteria and resolution options are not intended to be exhaustive.

3.3 Emphasis will be placed on early resolution and mediation, and the employee will be provided with suitable information about the mediation and resolution processes. Mediation is both voluntary and confidential. Employees are expected to give reasonable level of consideration to mediation as a potential means of resolving the issue they have raised.

3.4 In the event that no agreement can be reached as to the appropriate route to a resolution, then a formal investigation and resolution as set out in Appendix 1 will apply, if the employee who raised the original issue still wants to pursue the matter.

Resolution assessment criteria examples

Table 1

Criteria	Resolution options examples
a) Is this the first time that the issue has been raised?	Early resolution meeting with employee to assess the options and to secure a resolution.
b) Is this a matter which has been subject to previous resolution attempts?	Review the situation and offer further mediation, coaching or an investigation under the procedure in Appendix 1 depending on the circumstances. Does the new information provided justify re-opening the issue? Does the new information shed new light on the allegations originally made?
c) Does the dispute involve the line manager?	Early resolution meeting with employee to assess the options and to secure a resolution <i>or</i> Refer to the next level line manager for mediation <i>or</i> Refer to HR for mediation.
d) Is the dispute between more than two parties?	Possible team mediation using internal or external mediators.
e) Is the issue a relationship breakdown between two or more colleagues?	Refer for mediation.
d) Does the issue contain allegations of bullying, harassment or misconduct?	Refer to HR for support, coaching or mediation. <i>or</i> Carry out an under Appendix 1
f) Does the issue relate to a contractual issue not covered by other procedures?	Offer mediation to see if a resolution can be found <i>or</i> Seek advice to establish the legal position

4. Early Resolution meeting

- 4.1 The early resolution meeting is an early attempt to identify and resolve a disagreement, a conflict or a dispute. It provides an opportunity for managers, employees and colleagues to discuss situations in a supportive, constructive and empathetic forum. Most workplace disagreements, disputes and conflicts can be resolved at the resolution meeting stage.
- 4.2 If this route is agreed, the Resolution Manager will arrange for the meeting to take place as soon as possible.

- 4.3 The early resolution meeting is intended to be informal and co-operative.
- 4.4 There will be not normally be any documentation at the early resolution meeting but individuals invited to the meeting may ask the Resolution Manager if they may bring specific documents with them where they consider this will facilitate a constructive discussion.
- 4.5 Discussion at the early resolution meeting will not (normally) be minuted or formally recorded but the Resolution Manager shall keep a record of any actions and/or recommendations agreed.
- 4.6 A further early resolution meeting can be arranged at the agreement of all the parties concerned. This can either be to consider further the matters discussed in the previous meeting or as a review meeting after an agreed period of time to review the resolution outcomes.

5. Mediation

- 5.1 Mediation is a non-adversarial way of resolving difficult situations. It is being used increasingly to resolve disputes as an alternative to formal or legal processes.
- 5.2 The mediator is an impartial third party. They help the two or more parties have an open and honest dialogue, with the aim of identifying a mutually acceptable outcome. The mediator may be a line manager, trained in mediation, an internal mediator or, exceptionally, an external mediator.
- 5.3 Mediation is different from a formal investigation or hearing because it is about collaborating rather than apportioning blame. Any agreement made during mediation comes from those in dispute, not from the mediator. The mediator is not there to judge, to say one person is right and the other wrong, or to tell those involved in the mediation what they should or should not do. Mediation is both voluntary and confidential.
- 5.4 All mediators, whether internal or external, should be fully trained. Internal mediators will be required to undertake appropriate training as specific by the Assistant Chief Executive, Governance and HR.
- 5.5 If this route is agreed the Resolution Manager will contact a mediator and arrange a mediation meeting as soon as possible.

6. Formal Resolution

- 6.1 When employees have a complaint or concern that they feel has not been resolved satisfactorily by a resolution meeting or through mediation or other action, the formal investigation and resolution process in

Appendix 1 will apply, if the employee who raised the original matter wants to take it forward.

Review

This policy will be reviewed after it has been operational for one year and will then be reviewed every 3 years or at other times as required.

Appendix 1

Formal Resolution Procedure

1 Scope of the Procedure

- 1.1 This procedure will apply if a resolution is not reached at the informal resolution stage or in the event that it is agreed at the resolution assessment stage that it should or if it is not possible to reach any agreement as to the appropriate route at that stage and the employee who raised original matter wants to take it forward.
- 1.2 Employees will not be subject to any detriment for raising an issue which is dealt with through this procedure unless the issue has been raised by them maliciously in bad faith and is without foundation.

2. Representation

- 2.1 The council must comply with a reasonable request by the employee to be represented by a trade union representative or individual work colleague at all stages of the formal resolution procedure. This right extends to all parties who are involved in any meetings called by the Investigating Officer or Hearing Officer as part of their investigations. However, there is no right to be accompanied at any supervision or informal meetings outside of this procedure other than as provided for at 1.12 of the Workplace Resolution Policy.
- 2.2 The employee should tell the manager the name of the individual they have chosen and if they are a union official, which union they represent. The ACAS Code of Practice states: "it would not normally be reasonable for workers to insist on being accompanied by a companion whose presence would prejudice the hearing." If there is any potential conflict of interest of a chosen trade union representative, this will be discussed with the relevant branch secretary.
- 2.3 The representative is allowed to put forward the employee's case, to sum it up and to respond on the employee's behalf to any view expressed at any meeting or, hearing. The representative can confer with the employee during the meeting or hearing.

- 2.4 Where the representative is an Islington Council employee, they will be allowed reasonable time off, to be agreed in advance with their line manager, both to attend the Formal Resolution Meeting(s) and any appeal hearing and to confer with the employee before and after the meeting or hearing.
- 2.5 If an employee or their representative cannot attend any meeting or hearing on a proposed date, the employee can suggest an alternative date so long as it is reasonable and is not more than five working days after the date originally proposed by the manager. If the employee or their representative does not attend the rescheduled meeting, the meeting may be held in their absence.
- 2.6 If the substance of the issue raised in the Resolution Request relates to the activities of a trade union or one of its members undertaking such activities, the manager must contact HR immediately about how to proceed with managing the Resolution Request. HR will arrange a meeting with the relevant branch secretary or regional official of the union before any action is undertaken.

3. Timescales

- 3.1 Every effort should be made by all parties to adhere to the specified timetables and managers, HR, employees and representatives should advise each other as soon as possible of any reasons for delay and when they will be available to resume the process.

4. Malicious Grievances

Where, following the investigation, the allegations in the grievance are found to be without foundation and the view is taken that they have been brought maliciously in bad faith, formal disciplinary action may be recommended against the person who brought the grievance.

5. The Investigation

- 5.1 The purpose of the investigation is to discover all the relevant facts and information in a fair, reasonable and objective manner in order to resolve the issue(s) raised in the Resolution Request and alleviate the employee's concerns.
- 5.2 The line manager will arrange for another manager outside their service unit to investigate it. This person will be known as the Investigating Officer. HR can provide advice on the appointment of an appropriate investigating officer.
- 5.3 The Investigating Officer should normally be appointed within 5 working days of the decision to deal with the Resolution Request through a formal resolution meeting or decision.

- 5.4 In exceptional circumstances, e.g. where there is no appropriate line manager, the employee should contact the HR Business Partner who will advise as to who the Investigating Officer should be.
- 5.5 As soon as the Investigating officer is in receipt of a request to investigate, a Resolution Request they should write to the employee to arrange an initial investigation meeting as soon as possible.
- 56 The employee should inform the Investigating Officer of any planned absence in the period following submission of the grievance.
- 5.7 The Investigating Officer will also advise the employee that they have the right to be to be accompanied by a trade union representative or work colleague during the investigation meeting.
- 5.8 The Investigating Officer should check the following at the interview with the employee:
- The nature of the issues raised in the Resolution Request
 - Whether they think there are any witnesses
 - Their desired outcome.
- 5.9 The Investigating Officer should arrange for a note taker to take notes of the meeting, which should be given to the employee to be signed and dated.
- 5.10 The Investigating Officer should interview the subject(s) of the Resolution Request and relevant witnesses and they should be advised that they may also have a trade union representative or work colleague present at their interviews..
- 5.11 Where there is an unavoidable delay, e.g. due to absence or annual leave, the investigating officer should keep the complainant informed through email or in writing.
- 5.12 The Investigating Officer should normally complete the investigation within, as a guideline, 15 working days of being appointed. If this timescale is extended for any reason, the Investigating Officer should inform the employee of the reasons for the delay and when they can expect the investigation to be completed.
- 5.14 Following the investigation, the Investigating Officer should produce a report containing findings of fact. The employee's Resolution Request should be an appendix to the report. The report may also contain recommendations, and observations in respect of the employee's suggested remedies. The report should address the complaints, any attempts to resolve the issues raised. The report may recommend that a formal resolution meeting be held to discuss the findings in the report or the report may include a decision by the Investigating Officer.

- 5.15 A letter should be sent to the employee within 20 working days of commencement of the investigation providing a copy of the investigation report. If the report includes a recommendation that a formal resolution meeting take place the Investigating Officer should arrange for the meeting to take place as soon as possible.
- 5.16 If the report does not include a recommendation that a formal resolution meeting take place, the letter should also state to whom the employee should appeal to if they are unhappy with the Investigating Officer's decision.
- 5.17 In the event that it is not possible to agree a resolution at the formal resolution meeting, the Investigating Officer shall revise and reissue their report with a decision on the issue(s) and their recommendations, including whether the employee's suggested remedies are acceptable (in whole or in part). A letter containing the final report should be sent to the employee as soon as possible and should also state to whom the employee should appeal to if they are unhappy with the Investigating Officer's decision
- 5.1 A copy of the report(s) and covering letter sent to the employee should also be sent to the person(s) complained about.
- 5.19 Where it is not practical to produce a report within the timescale the Investigating Officer should keep the employee informed of progress and also explain when the report will be available.

6. Appeals

- 6.1 If the employee did not agree an outcome at a Formal Resolution Meeting or has received a decision from the Investigating Officer and considers that the matter has not been satisfactorily resolved, they may appeal by submitting their reasons via the Resolution Appeal pro forma and attaching a copy of the original Resolution Request to the Investigating Officer. **The employee must state clearly their grounds of appeal in the pro forma.**
- 6.2 Normally, the appeal will be allocated by the Investigating Officer and HR to another officer outside the employee's service unit at a more senior level than the manager who investigated the matters raised in the Resolution Request, unless this is not reasonably practicable. This person will be known as the Hearing Officer.
- 6.3 The Investigating Officer must receive the appeal within 5 working days of receipt of the Investigating Officer's report by the employee.
- 6.4 The Hearing Officer should write to the employee within 10 working days of receipt of the appeal to arrange a meeting with the employee. The employee should be advised that they have the right of

representation at this meeting by an individual work colleague or trade union representative.

- 6.5 The Hearing Officer will consider the reasons for the appeal, review the paperwork of the original investigation and hear the employee's and/or representative's views in order to make a decision.
- 6.6 Where the Hearing Officer decides it is appropriate, they can request to meet the Investigating Officer and/or person complained about and/or other witnesses in order to clarify matters.
- 6.7 The Hearing Officer should normally confirm their decision in writing to the employee within 10 working days of the meeting with the employee. The appeal outcome letter should address the decision, the reasons for the decision, the evidence used to make the decision in the appeal, and any appropriate recommendations.
- 6.8 The decision is final and the employee will have no further right of appeal.